

## **EXHIBIT B**

1 ROUGH DRAFT TRANSCRIPT OF THE  
2 DEPOSITION OF CHRISTOPHER SMITH

3 January 15, 2010

4

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24 transcript.

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2 Hinckley of LNS court reporting. The date today  
3 the January 15, 2010, and the time is approximately  
4 9:01 a.m. This deposition is being held in the  
5 office of Tonkon Torp, LLP, located at 888 S.W.  
6 Fifth Avenue, Suite 1600, Portland, Oregon 97204.

7 The caption of this case is case number  
8 207CV503RRR, IP Innovation LLC and Technology  
9 Licensing Corps versus Google, Incorporated, in the  
10 U.S. District Court for the Eastern District of  
11 Texas, Marshal Decision. The name of the witness  
12 is Chris Smith.

13 At this time the attorneys will identify  
14 themselves and the parties they represent. After  
15 which our court reporter, Rosemary Tanzer with LNS  
16 Court Reporting, will swear in the witness and we  
17 can proceed.

18 MS. LEE: Anna Lee with WilmerHale  
19 for Google.

20 MS. INGRAM: Kristin Ingram,  
21 attorney for Xerox Corporation.

22  
23 CHRISTOPHER SMITH

24 having first been sworn by the reporter to  
25 tell the truth, testified under oath as follows:

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1 EXAMINATION

2 BY MS. LEE:

3 Q Mr. Smith, good morning.

4 A Good morning.

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5 Q My name is Anna Lee and I'm from the law firm  
6 of WilmerHale. My firm represents the defendant  
7 Google in the patent litigation lawsuit brought by  
8 the plaintiffs IP Innovation, LLC, and Technology  
9 Licensing Corporation. Can you please state your  
10 full name for the record?

11 A Christopher P. Smith.

12 Q And what is your home address?

13 A 2343 N.W. Pettygrove Street, Portland, Oregon,  
14 97210.

15 Q Have you testified before?

16 A I don't believe so.

17 Q Have you ever been -- do you recall ever being  
18 deposed before?

19 A Definitely never been deposed.

20 Q So I'm going to go through some ground rules  
21 here. I'm going to be asking you a series of  
22 questions. I'll ask that you answer those  
23 questions truthfully and to the best of your  
24 ability. There is a court reporter that's going to  
25 be typing everything that you say here today, and

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1 this will result in a transcript.

2 Now it's important that you understand  
3 the questions that I ask and that you give an  
4 accurate answer. If at any time you don't  
5 understand a question, please let me know and I'll  
6 try to clarify for you. If you answer, I'll assume  
7 that you've understood the question. And if there

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8 is anything you don't know or aren't sure of,  
9 please let us know.

10 I ask that you give verbal answers to my  
11 questions, so the court reporter can write  
12 everything down. So please don't use nonverbal  
13 gestures or uh-huh or nodding your head. Please  
14 allow me to finish answering my questions before  
15 answering, and I will allow you to finish answering  
16 before I ask you the next question. Should you  
17 need a brief break, please let us know. After any  
18 pending questions are answered you can then take a  
19 break.

20 Now, you understand that your testimony  
21 today here is under oath, just as if you were in  
22 the courtroom, and that the court reporter is  
23 taking down, verbatim, the testimony that you're  
24 about to give?

25 A Yes.

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1 Q Do you have any questions about the procedures  
2 that we're going to follow today?

3 A No.

4 Q And are you represented by counsel today?

5 A I am.

6 Q Can you identify that counsel?

7 A Kristin Ingram.

8 Q Is she with Xerox?

9 A She's with Xerox, yes.

10 Q Mr. Smith, can you please briefly describe  
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11 your education after high school?  
12 A Sure. I have a bachelor of science from  
13 Rensselaer Polytechnic in computer systems  
14 engineering and I have a master's of business  
15 administration from Boston University.  
16 Q And when did you receive your bachelor's of  
17 science?  
18 A In 1982.  
19 Q And when did you receive your master's in  
20 business administration?  
21 A 1987.  
22 Q Do you hold any other professional  
23 designations or licenses?  
24 A No.  
25 Q Mr. Smith, you are currently employed?

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1 A Yes, I am.  
2 Q And who is your current employer?  
3 A Xerox Corporation.  
4 Q How long have you worked at Xerox?  
5 A Depending on how you count acquisitions, I  
6 have a little bit over 25 years of service.  
7 Q Let's start with your current position going  
8 backwards. So can you tell us what your current  
9 position is?  
10 A Sure. I'm an Internet technologist in the  
11 Internet marketing group.  
12 Q What is that? Can you explain a little what  
13 that means?

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14 A Essentially I'm one of the key architects for  
15 the software that drives the product information  
16 section of the Xerox.com website.

17 Q How long have you held this position?

18 A I've been doing Internet marketing for a  
19 combination of Techtronix and then Xerox in some  
20 form since 1995.

21 Q And you mentioned a company, Techtronix?

22 A Yes.

23 Q Was that a company that you previously worked  
24 at?

25 A Yes. In 2000 Xerox purchased the color

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1 printer division of Techtronix, which I was  
2 employed by.

3 Q How long were you employed with Techtronix?

4 A I became a Techtronix employee in 1988, I  
5 believe. I was previously employed with a company  
6 that they had purchased.

7 Q And how long did you hold your current  
8 position? How long have you held that Internet  
9 technologists position for?

10 A Well, the job has evolved somewhat, but the  
11 current -- I would say the current position  
12 primarily dates from 2000 after the acquisition.

13 Q Can you explain to us a little bit more about  
14 your duties and responsibilities? I know you  
15 explained generally what your title means, but what  
16 do you do on a day-to-day basis?

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17 A On a day-to-day basis I'm part of a team that  
18 both constructs the software that operates the  
19 website and then provides the content that  
20 populates the website. My role is principally in  
21 high-level design of the software.

22 Q And you said that you started this position on  
23 or about 2000?

24 A Right.

25 Q Is that right?

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1 A uh-huh.

2 Q And what was your position prior to that?

3 A Prior to that I had been the director of  
4 Internet marketing for both Techtronix and then --  
5 or Techtronix color printer division, and then for  
6 the office printing business within Xerox after we  
7 were purchased. In 2000 I stepped down from the  
8 management role into an more individual contributor  
9 position.

10 (Reporter clarification)

11 A Into an individual contributor position.

12 Q And did you hold any positions prior to that?

13 So we're going backwards here.

14 A Right. So in the early '90s I had been the  
15 manager of direct marketing for the color printing  
16 division of Techtronix. The Internet work was  
17 originally put in the direct marketing department  
18 and then, of course, grew into its own department.

19 Prior to that I had been a product manager for

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20 Techtronix.

21 Q And was that your first position when you  
22 entered Techtronix as a product manager or did you  
23 have any position prior to that?

24 A In 1988, when I first became a Techtronix  
25 employee, I was a marketing manager in the

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1 computer -- what was the title -- computer system  
2 engineering division.

3 Q So that was your first position when you  
4 started Techtronix?

5 A After the acquisition of the company I was  
6 working for, yes.

7 Q What was the company that you were working for  
8 when Techtronix was acquired?

9 A It was called CA Systems, and I was an  
10 applications engineer in the Boston field office.

11 Q Was that the first position that you acquired  
12 after graduating from -- getting your undergrad or  
13 graduate degree?

14 A That was my second position. My first  
15 position was as a computer hardware designer for a  
16 company called IPL Systems in the Boston area.

17 Q How long were you working there?

18 A Two or three years.

19 Q Thank you. In a moment I'm going to hand you  
20 what I'm going to ask the court reporter to mark as  
21 Exhibit 1. This document bears production numbers

22 GGL-0002393 through 94. Mr. Smith, have you seen  
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23 this document before?

24 (Exhibit No. 1 marked.)

25 A I have.

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1 Q Can you tell us what it is?

2 A I believe it is a case study on the Google  
3 website describing the purchase by Techtronix of a  
4 Google Search Appliance -- or I'm sorry, by Xerox  
5 of a Google Search Appliance.

6 (Reporter clarification)

7 A Search appliance.

8 Q Now, if you can look at the third paragraph on  
9 this page -- in the first page. Towards the end of  
10 this sentence do you see where it says, "'Chris  
11 Smith, lead Internet technologist for the Office  
12 Group at Xerox'"?

13 A Uh-huh.

14 Q Do you understand that to be you?

15 A Yes.

16 Q Now, can you please tell me how you came to be  
17 mentioned in this document?

18 A We had purchased the Google Search Appliance.  
19 My recollection is I was contacted from someone at  
20 marketing at Google who asked if they could do a  
21 case study. I then sought approval from Xerox  
22 public relations, which they granted.

23 Q Do you recall who it was at Google's marketing  
24 department that had contacted you?

25 A I don't.

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1 Q Do you recall when they had contacted you?  
2 A I know that the product we purchased was  
3 introduced sometime around 2004, so it was roughly  
4 in that time frame. But other than that, I have no  
5 specific recollection.

6 Q And why did you agree to talk to this  
7 marketing person at Google?

8 A I think, in general, Xerox likes being  
9 portrayed as a leader in technology. So embracing  
10 something new and different to solve a problem is  
11 the general interest of Xerox branding.

12 Q And did this conversation occur via -- was it  
13 via telephone? Was it an in-person meeting when  
14 you met with this Google marketing person that  
15 contacted you?

16 A I'm sure it was not an in-person meeting.  
17 Whether it was e-mail or phone, I have no  
18 recollection.

19 Q Do you remember if this was a series of  
20 exchanges that occurred between you and this person  
21 at Google or was this a one-time conversation that  
22 occurred?

23 A I'm sure it would have been several  
24 conversations.

25 Q Do you recall how many conversations that

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1 might have been?

2 A I don't.

3 Q Do you think it would expand over a period of  
4 weeks?

5 A Something like this could not happen faster  
6 than that, I'm sure.

7 Q Now, if I can have you look at paragraph four  
8 starting with, quote, "'I evaluated other search  
9 solutions.'" Do you see that?

10 A Yes, I do.

11 Q Did you make that statement?

12 A Yes.

13 Q Can you explain why you were looking at search  
14 solutions at the time?

15 A Yes. When we were -- at that time my  
16 responsibilities included both the external Xerox  
17 website portions of it and an internal intranet  
18 site used by sales and marketing employees within  
19 our division. And when we left Techtronix, we had  
20 brought a portion of that intranet with us. At the  
21 time we could no longer use the search solution  
22 that Techtronix had for their internal website  
23 because we had separated, so we were looking for a  
24 new search tool for that site.

25 Q Do you recall what other search solutions that

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1 you evaluated at the time?

2 A I believe, specifically, we were using Verity

3 Software for some other search applications and  
4 evaluated it for this application, as well.

5 Q So you evaluated Verity, apparently, Google  
6 Search Appliance. Do you recall evaluating other  
7 search solutions?

8 A There may have been other software solutions.  
9 I don't specifically recall.

10 Q If you could look at the next sentence where  
11 it says, "'They were expensive, involved a great  
12 deal of IT configuration time and ongoing  
13 maintenance, and required us to find a server to  
14 host it on.'" Do you see that?

15 A Yes.

16 Q Do you recall making that statement?

17 A Yes.

18 Q Do you believe this to be an accurate  
19 statement when you made it?

20 A I do.

21 Q Let's take a look at the next sentence. It  
22 says, "'we had a very small budget to work with,  
23 and I needed to find an inexpensive solution that  
24 didn't require a lot of effort.'" Do you see that?

25 A Yes.

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1 Q Did you make that statement?

2 A Yes, I did.

3 Q And can you tell us how you learned about  
4 Google Search Appliance?

5 A I don't recall, specifically.

6 Q Do you believe that someone at Xerox brought  
7 it to your attention? Do you recall --

8 A More likely it was a trade publication or some  
9 kind of news.

10 Q You do recall if you were the one that went  
11 out and sought to test the Google Search Appliance  
12 product and reached out to Google to potentially  
13 acquire it, inhouse?

14 A Yes, I was.

15 Q Was there anyone else that was working with  
16 you at the time on this project?

17 A There would have been other people involved  
18 from either the IT department, possibly one of my  
19 colleagues in the Internet group, who would have  
20 evaluated the applicability of this solution.

21 Q Are any of those colleagues still working with  
22 you today?

23 A Potentially one. I honestly don't remember if  
24 he was specifically involved. He may have been.

25 Q Do you recall the name of this other person

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1 that worked with you?

2 A His name was Jim Canan, C-A-N-A-N.

3 Q So Mr. Smith, did you conclude that, at the  
4 end of your search for various search solutions,  
5 that Google Search Appliance was expensive or  
6 inexpensive compared to the other solutions that  
7 you were looking at?

8 A My general recollection is that it compared to

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9 acquiring a software solution, and that the  
10 internal time to configure it and locating a  
11 hardware server to put it on, the price point was  
12 very appealing.

13 Q Do you recall if there were any other  
14 contenders at the time or if Google Search  
15 Appliance stood out as the product that you were  
16 interested in choosing?

17 A Again, all the other possibilities were  
18 software solutions.

19 Q What -- after looking at the variance search  
20 solutions, what did you conclude about the effort  
21 that Google Search Appliance required compared to  
22 the others, if you can go through that?

23 A The major benefit that I perceived at the time  
24 was that it would require relatively little  
25 configuration. So we wouldn't be spending a lot of

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1 internal resources on either setting it up or  
2 maintaining it.

3 Q Were there any other benefits that stood out  
4 to you?

5 A I don't remember the specific cost comparisons  
6 between the software licenses and the appliance,  
7 but they must have been reasonably favorable.

8 Q If I can turn your attention to the sixth  
9 paragraph, which is the last full paragraph in that  
10 first page. Do you see the sentence where it  
11 starts with, "'Google had it all'"?

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12 A Uh-huh.  
13 Q Did you make this statement?  
14 A Yes, I did.  
15 Q And if you can look at the next sentence where  
16 it says, it was expensive -- "It was inexpensive  
17 and easy to use.'" Do you see that?  
18 A Yes.  
19 Q And did you make that statement?  
20 A Yes.  
21 Q Do you believe it to be an accurate statement  
22 when you made it?  
23 A I do.  
24 Q If you can look at the next sentence where it  
25 says, "I spent about half a day going through our

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1 document collection and the other half tweaking the  
2 look and feel of the search pages to match the  
3 Xerox brand.'" Do you see that?  
4 A Yes.  
5 Q And did you make this statement?  
6 A Yes, I did.  
7 Q If you can look at the next sentence where it  
8 says, "He used the Page Layout Wizard to cut and  
9 paste HTML from their existing templates." Do you  
10 see that?  
11 A Yes.  
12 Q Did you do what is described in this sentence?  
13 A I know that we cut and paste HTMLs from our  
14 existing templates. I don't specifically remember

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15 using the Page Layout Wizard to do so.

16 Q Was this document presented to you at the time

17 that you made these statements?

18 A I don't have a specific recollection, but

19 certainly our corporate PR would have -- or our

20 division PR, I don't remember, one of the PR groups

21 would have signed this off and I would have been

22 part of that process.

23 Q So if at the time they presented this document

24 to you and it said that you used this Page Layout

25 wizard to cut and paste the HTMLs into your

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1 existing templates, would you have any reason to

2 believe know that that would be an inaccurate

3 statement?

4 A No.

5 Q Because at the time you would have -- if you

6 saw this statement and it was inaccurate, you

7 wouldn't have let it go to print. Is that correct?

8 A Correct.

9 Q Now, if you can look at the next two sentences

10 where it says, "'That's all it took to get up and

11 running. It simply worked right out of the box.'"

12 Do you see that?

13 A Yes.

14 Q And did you make this statement?

15 A Yes.

16 Q Did you believe it to be an accurate statement

17 when you made it?

18 A Yes.

19 Q And did GSA, Google Search Appliance, in fact  
20 work right out of the box?

21 A It did.

22 Q Now, if you can turn to the paragraph that  
23 begins at the bottom of the first page, continues  
24 at the top of the second page. Do you see where it  
25 says, "Smith was also pleased that," and then it

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1 has another quotation from you. It reads, "'Our  
2 employees were already comfortable using Google for  
3 web search. We simply put the search box in the  
4 corner of the web page and let the team have at  
5 it.'" Did you make these statements?

6 A Yes, I did.

7 Q Do you believe them to be accurate when you  
8 made them?

9 A Yes.

10 Q Was it, in fact, true that Google Search  
11 Appliance required no real user training?

12 A That's correct.

13 Q Now, if you can look at the paragraph that  
14 begins after the heading, end result. Do you see  
15 the quotation attributable to you where it reads,  
16 "'The best overall benefit is that there is no  
17 ongoing maintenance. We've never had to call for  
18 support because we've never had any problems.

19 That's been a huge win for us.'"

20 A Yes.

21 Q Did you make these statements?

22 A I did.

23 Q And do you believe them to be accurate when  
24 you made them?

25 A I do. I would qualify that I believe I was

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1 using the word maintenance in the sense of ongoing  
2 activities to maintain it. There is actually a  
3 maintenance contract with Google, that essentially  
4 buying a new appliance every two years, I believe,  
5 as part of that.

6 Q So when you made this statement, was it -- was  
7 it true that you never really had to call for  
8 support because you didn't have problems with  
9 Google Search Appliance?

10 A At that time it was correct. I believe we may  
11 have actually had one appliance at some point that  
12 crashed and had to be replaced. But at the time I  
13 gave this quote, that was certainly true.

14 Q And at this paragraph it says that Google  
15 Search Appliance was installed about April 2002.  
16 Is that correct?

17 A I don't have a specific recollection, but I  
18 have no information to disagree with that.

19 Q So let me direct your attention to the end of  
20 the paragraph, of that same paragraph that we're  
21 looking at. Do you see that there is another  
22 quotation attributed to you which reads, "'Since we  
23 started using the Google Search Appliance,' says

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24 Smith, 'the sales force is able to find what  
25 they're looking for and we've stopped receiving

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1 complaints.'" Did you make this statement?

2 A I did.

3 Q Did you believe it to be accurate when you  
4 made it?

5 A Yes.

6 Q After installation of the Google Search  
7 Appliance, was the sales force, in fact, able to  
8 find what they were looking for with this product?

9 A Well, as I said before, they stopped  
10 complaining. It was a large source of complaint  
11 prior to that.

12 Q Do you recall why they were receiving  
13 complaints about --

14 A The documents involved were essentially sales  
15 collateral documents, so their ability to find the  
16 right one quickly was important to their  
17 productivity.

18 Q And after installation, as your quote says,  
19 you stopped receiving complaints.

20 A Right.

21 Q Let's turn back to the first page. At the  
22 bottom right-hand corner, do you see the word  
23 "benefit"? Under that there is a quote attributed  
24 to you that continues on top of the right-hand  
25 corner of the next page. It reads, "'We used to

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1 have a lot of complaints from our sales force that  
2 they weren't able to find crucial documents on our  
3 intranet. Since we started using Google Search  
4 Appliance, the sales force is able to find what  
5 they're looking for, and we've stopped receiving  
6 complaints.'" Did you make this statement?

7 A Yes, I did.

8 Q Did you believe it to be accurate when you  
9 made it?

10 A I did.

11 Q All right. In a moment I will hand you what  
12 I'll ask the court reporter to mark as Exhibit 2.

13 (Exhibit No. 2 marked.)

14 Q BY MS. LEE: This is a copy of U.S. patent number  
15 5,675,819 which I am going to call the 819 patent.  
16 The document bears production numbers GGL0005768  
17 through 96. Mr. Smith, have you ever seen the 819  
18 patent before?

19 A I have not.

20 Q Do you know what -- the invention that's  
21 claimed in the 819 patent?

22 A I don't.

23 Q Did you do anything to prepare for the  
24 deposition today?

25 A Since I believe that I was identified because

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2 study on the web and determined approximately when  
3 the product mentioned was introduced. And I  
4 consulted with our corporate counsel.

5 Q Did you review any other documents --

6 A I did not.

7 Q -- to prepare for this deposition? Did you  
8 bring any notes with you today to the deposition?

9 A No.

10 Q And you mentioned that you communicated with  
11 Xerox corporate counsel; is that right?

12 A Yes.

13 Q Who was it at Xerox corporate counsel you  
14 communicated with?

15 A I went through a number of folks. There  
16 was -- our group is, because we're a corporate  
17 group, there is -- our first line of contact is an  
18 attorney in our corporate office in Stanford. She  
19 referred me to Lou Faber, who referred me to  
20 another colleague, who referred me to Manny Kiogi  
21 (phonetic), who involved Kristin.

22 Q So you had a series of conversations?

23 A I did.

24 Q What did you discuss with them, generally,  
25 without revealing any privileged communication?

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1 A How the deposition would work.

2 Q And about how long did these conversations  
3 last?

4 A I think the longest one was ten or 15 minutes.

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5 Q Do you recall when, generally, these  
6 conversations occurred?

7 A The conversation with Kristin and Manny, which  
8 was the most substantive, was I believe either  
9 Monday or Tuesday of this week.

10 Q And have you communicated with anyone else  
11 regarding your deposition today?

12 A Mentioned to some colleagues that I would be  
13 testifying.

14 Q Have you communicated with anyone about this  
15 case, generally?

16 A No.

17 Q Have you discussed -- aside from your  
18 communications with Xerox corporate counsel and  
19 your colleagues, have you discussed this lawsuit  
20 with anyone else at Xerox?

21 A No.

22 Q Have you discussed this present lawsuit with  
23 anyone at plaintiff's, IP Innovation?

24 A No.

25 Q Or Technology Licensing Corporation?

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1 A No.

2 Q How about plaintiff's counsel, the Niro law  
3 firm?

4 A No.

5 Q Have they reached out to you?

6 A No.

7 Q Have you had any past business dealings with

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8 the plaintiffs?

9 A I provided information for discovery in a  
10 patent suit for Xerox. I don't know if it was the  
11 same plaintiff or not.

12 Q Do you recall when you provided this  
13 information?

14 A Roughly two to three years ago.

15 Q But you're not sure if this is the plaintiffs  
16 in this case?

17 A I am not.

18 Q And you don't hold any positions with  
19 plaintiffs, IP Innovation or Technology Licensing  
20 Corporation?

21 A I do not.

22 Q Has anyone asked for your opinion about  
23 whether Google infringes any IP Innovation's or  
24 Technology Licensing Corporation's patents?

25 A No.

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1 MS. LEE: That's all the questions I  
2 have for you today.

3 A Okay.

4 MS. LEE: Thank you, Mr. Smith.

5 THE VIDEOGRAPHER: This marks the  
6 end of the deposition of Chris Smith. This is  
7 video one, volume one. And we're going off the  
8 record at 9:27 a.m. Please stand by.

9 (DEPOSITION ADJOURNED AT 9:28 A.M.)

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